

Message Text

PAGE 01 STATE 161635

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ORIGIN EB-11

INFO OCT-01 IO-13 ADP-00 L-03 OMB-01 TAR-02 AGR-20 AID-20

CIAE-00 COME-00 INR-10 LAB-06 NSAE-00 OIC-04 RSC-01

SIL-01 STR-08 TRSE-00 CIEP-02 CEA-02 PA-03 PRS-01

USIA-15 SS-15 NSC-10 LOC-01 CU-04 /154 R

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TO USMISSION GENEVA PRIORITY

UNCLAS STATE 161635

E.O. 11652: N/A

TAGS: ETRD, UNCTAD

SUBJECT: CMTE ON MANUFACTURES, ITEM SEVEN

1. FOLLOWING IS ADDITIONAL GUIDANCE FOR COMMITTEE ON MANUFACTURERS MEETING AGENDA ITEM 7 AS REQUESTED BY TELECON. DEPARTMENT HAS NO OBJECTION TO CLAUSE IN RESOLUTION SUGGESTING CONSIDERATION OF TECHNICAL TRAINING PROGRAM IN COUNTRY DEVELOPMENT PROGRAMS. IF LDCS INTEND RECOMMEND THIS PROGRAM FOR CONSIDERATION INCLUSION IN DEVELOPED COUNTRY ASSISTANCE PROGRAMS, DEPARTMENT ALSO WOULD NOT OBJECT AS LONG AS NOT IN FORM OF DEMAND FOR INCLUSION BUT RATHER SUGGESTION TO CONSIDER. USDEL SHOULD VOTE AGAINST ANY CLAUSE WHICH WOULD RESULT IN NEW LARGE UNCTAD STAFF OF TECHNICAL ADVISORS IN RBP.

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PAGE 02 STATE 161635

2. FOLLOWING GUIDANCE KEYED TO PARAS IN CHAPT. TWO OF TD/B/C.2/119. PARAS 56, 57, 60 AND 61 ARE STATEMENTS OF FACT WITH WHICH U.S. HAS NO PROBLEM.

PARA 58 - U.S. SUPPORTS REASONABLE ANTITRUST LEGISLATION IN

OTHER COUNTRIES AND WOULD SUPPORT GENERAL CLAUSE OF ENDORSEMENT. USDEL SHOULD VOTE NEGATIVE OR ABSTAIN ON CLAUSE CONTAINING LIST OF SPECIFIC PRACTICES OR RECOMMENDING SPECIFIC ADMINISTRATIVE OR LEGAL STRUCTURE.

PARA 59 - STATEMENT OF FACT WITH WHICH US HAS NO PROBLEM EXCEPT MISSTATEMENT CORRECTED IN POSITION PAPER.

PARA 62 - US DOES NOT OBJECT TO REASONABLE COMPULSORY LICENSE LAW IN LDCS WITH REASONABLE ROYALTY PROVISIONS AND CONSISTENT WITH PARIS UNION FOR THE PROTECTION OF INDUSTRIAL PROPERTY. US CAN NOT RPT NOT ENDORSE INCLUSION OF KNOW-HOW IN COMPULSORY LICENSE LAW. THERE IS NO WAY LDC CAN COMPEL FOREIGN OWNER TO TRANSFER SECRET OR SEMI-SECRET KNOW-HOW.

PARA 63 - US AGREES ECONOMIC CONSIDERATIONS MUST BE TAKEN FULLY INTO ACCOUNT BUT IN LONG TERM VIEW, FREE COMPETITION STILL BASIC CONSIDERATION IN ALL BUT VERY EXCEPTIONAL CIRCUMSTANCES. USDEL SHOULD NOT ENDORSE CONCEPT COMPETITION NOT MAJOR CONSIDERATION.

PARA 64 - US AGREES.

PARA 65 - US AGREES.

PARA 66 - US AGREES BUT POINTS OUT THAT EXCESSIVE SCREENING AND BUREAUCRATIC DELAYS CAN BECOME OBSTACLE TO DEVELOPMENT.

PARA 67 - POSITION PAPER ITEM 6(G) STILL VALID. USDEL SHOULD OPPOSE CLAUSE REQUESTING DEVELOPED COUNTRIES INCLUDE THIS CONCEPT IN LEGISLATION, BUT MAY APPROVE CLAUSE CALLING NEEDS OF LDC TO ATTENTION OF AUTHORITIES ADMINISTRATION. UNCLASSIFIED

PAGE 03 STATE 161635

TERING RBP LAWS.

PARA 68 - FROM INTERNATIONAL ASPECT US AGREES CARTEL ACTIVITY CAN BE HARMFUL BUT NATIONAL VIEWPOINT INDUSTRY NEEDS ABILITY FACE COHESIVE ACTION ABROAD. THESE COHESIVE ACTIONS INCLUDE SELLING CARTELS AND GOVERNMENT COMMODITY BOARDS IN SOME LDCS. MOST INDUSTRIAL COUNTRIES PERMIT NATIONAL EXPORT CARTELS BUT MANY INCLUDING US DO NOT PERMIT INTERNATIONAL CARTELS. USDEL SHOULD OPPOSE ANY CLAUSE DEMANDING ACTION TO ELIMINATE EXPORT ASSOCIATIONS OR MAKING ABSOLUTE VALUE JUDGMENT. USDEL SHOULD ATTEMPT AVOID THIS SUBJECT IN RESOLUTION BUT IF NECESSARY COULD ACCEPT CLAUSE POINTING TO POTENTIAL HARMFUL EFFECTS AND REQUESTING ALL COUNTRIES WITH THESE LAWS TO CONSIDER ELIMINATION.

PARA 69 - US DOES NOT OPPOSE.

PARA 70 - US AGREES EXTRATERRITORIALITY HAS BEEN PROBLEM TO MANY COUNTRIES BUT NOT ONE WHICH UNCTAD CAN HANDLE.

THIS IS LEGAL PROBLEM IN WHICH ACTION IN ONE AREA SETS PRECEDENT FOR ALL AREAS. MOST US COULD ACCEPT IS CLAUSE CALLING PROBLEM TO ATTENTION OF APPROPRIATE INTERNATIONAL JURIDICAL BODY.

PARA 71 AND 72 - US SHOULD OPPOSE PARA 72 INsofar AS IT PROVIDES THAT COUNTRY OF LICENSEE IS MORE APPROPRIATE FORUM THAN COUNTRY OF LICENSOR. EITHER PARTY TO A CONTRACT CAN THROUGH NEGLIGENCE BE PLACED AT A DISADVANTAGE THROUGH CHOICE OF CONTRACT LAW. THIS NEED NOT BE MAJOR CONCERN OF COUNTRIES AS LONG AS IT CLEAR THAT PRIVATE CONTRACT CHOICE CANNOT BE USED TO AVOID NATIONAL LAW OR EQUITY. IT SHOULD BE CLEAR THAT NATIONAL LAW OF LICENSOR IS NOT "FOREIGN" TO THE CONTRACT AND SHOULD REMAIN CHOICE. US CAN NOT ENDORSE CONCEPT THAT RECIPIENT COUNTRY LAW IS ONLY ACCEPTABLE ALTERNATIVE. THIS NOT APPROPRIATE SUBJECT FOR UNCTAD BUT AGAIN SHOULD BE CONSIDERED BY JURIDICAL AUTHORITIES.

PARA 73 - US AGREES

UNCLASSIFIED

PAGE 04 STATE 161635

PARA 74 - SEE PARA ONE ABOVE

PARA 75 - US AGREES IN PRINCIPLE BUT ANY PROGRAM SHOULD BE GRADUAL, WITHIN UNDP FRAMEWORK AND WITH COOPERATION OTHER INTERESTED AGENCIES INCLUDING UNIDO AND WIPO. USDEL SHOULD NOT ENDORSE NEW LARGE UNCTAD PROGRAM UNTIL REAL EFFECTS RBPS AND NEEDS LDCS FULLY UNDERSTOOD.

PARA 76 - US AGREES IN PRINCIPLE. BEFORE US COULD APPROVE ACTUAL UNCTAD PROGRAM WOULD HAVE TO SEE CONCRETE PROPOSAL FULLY COORDINATED WITH PRESENT UNIDO AND WIPO PROGRAMS IN THIS AREA.

PARA 77 - US DOES NOT BELIEVE COPYRIGHTS AND DESIGN PROVISIONS ARE IMPORTANT RESTRICTIVE FACTORS IN DEVELOPMENT BUT IF GROUP 77 INSIST ON INCLUSION OF STUDY THIS SUBJECT MUST BE DONE JOINTLY WITH WIPO AND UNESCO AS THEY EACH ADMINISTER MAJOR COPYRIGHT CONVENTION.

PARA 78 - US AGREES WITHIN PRESENT STAFF AND BUDGET LIMITATIONS.

PARA 79 - US REMAINS FIRMLY OPPOSED AS PER POSITION PAPER.

PARA 80 - CONSULTATION PROCEDURES IN OE DIFFER FROM THOSE

WHICH MIGHT BE USEFUL IN A WORLD CONTEXT. AN OECD MEMBER COUNTRY HAS OBLIGATION TO NOTIFY ANOTHER WHEN COMPANY OR DIRECT BUSINESS INTEREST OF SECOND AFFECTED BY RBP ACTION

IN FIRST. US NOT AWARE OF ANY SPECIFIC EXAMPLE OF WHEN NOTIFICATION OR CONSULTATION IN RBP AREA REQUESTED OR NEEDED BY LDC IN ADMINISTRATION OUR LAWS. US WILLING EVENTUALLY CONSIDER SUCH PROCEDURE BUT MUST FIRST STUDY SPECIFIC EXAMPLES WHEN PROCEDURE MIGHT BE USE TO DETERMINE TYPE OF CONSULTATION APPROPRIATE. USDEL SHOULD OPPOSE SUGGESTION THIS TIME AS PREMATURE.

PARA 81, 82 AND 83 - US OPPOSED IMMEDIATE EFFORTS DRAFT GUIDELINES OR CODES OF CONDUCT UNTIL MANY OF PENDING OR PROPOSED STUDIES IN UNCTAD AND ELSEWHERE COMPLETED. AS UNCLASSIFIED

PAGE 05 STATE 161635

EVIDENT FROM REPORT OF EXPERT GROUP, REAL EFFECTS VARIOUS RBPS NOT FULLY UNDERSTOOD. LACK OF LDC NATIONAL LEGISLATION IN MANY AREAS INDICATES NO VALID MEANS TO DETERMINE IF THERE ARE RESTRICTIVE PRACTICES WHICH ARE NOT SUSCEPTIBLE TO NATIONAL CORRECTIVE MEASURES. US FIRMLY OPPOSES CONCEPT ADOPTING REGULATION FIRST THEN STUDY PROBLEM. MAXIMUM US COULD ACCEPT WOULD BE TO AGAIN CALL ATTENTION TO EVENTUAL CONSIDERATION OF GUIDELINES OR CODES AT APPROPRIATE TIME.

PARA 84 - US COULD SUPPORT CLAUSE CALLING FOR SPECIAL CONSIDERATION NEEDS OF LEAST DEVELOPED OR IF OCCASION ARISES LAND-LOCKED.

PARA 85 - US POSITION REMAINS AS STATED IN POSITION PAPER.
ROGERS

UNCLASSIFIED

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